
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Response to Grand Jury Report Titled “Redevelopment in the City of San Diego – A Call for Transparency”

On May 6, 2009 the San Diego County Grand Jury issued a report to the City Council entitled “Redevelopment in the City of San Diego – A Call for Transparency.” The Grand Jury Report assesses the state of financial and operational accountability in the City’s redevelopment activities, and includes three findings and eleven recommendations. The City Council is required to provide comments to the Presiding Judge of the Superior Court on each of the finding and recommendations made in the Grand Jury report.

On September 8, 2009, the City Council approved a number of conceptual changes to the Operating Agreements and Corporation Bylaws to effectuate greater oversight and accountability of the two non-profit redevelopment corporations, Centre City Development Corporation (CCDC) and Southeastern Economic Development Corporation (SEDC). It is anticipated that these conceptual changes will be brought back for final Council approval and implementation in November 2009.

The original deadline for the Council’s response was August 4, 2009. Due to the timing of the August legislative recess, the Superior Court granted an extension to September 15. However, this new deadline coincided with the timeframe by which Council was anticipated to take action on the proposed changes to Operating Agreements and Corporation Bylaws. Since these proposed changes would address many of the issues discussed in the Grand Jury report, the Superior Court granted another extension to allow for the Council action, which was subsequently taken on September 8. The current deadline for Council responses is October 13, 2009.

In preparing the proposed responses, the IBA has met with Redevelopment Agency staff to review factual information regarding the Grand Jury Report. The proposed responses address the Grand Jury findings and recommendations as directly as possible based on factual information, previous Council or Committee actions, and additional IBA research. Due to the timing of the Council's action on September 8, and in consideration of the numerous Committee discussions that have been held on redevelopment issues over the past year, the proposed responses to the Grand Jury report were not presented at the Committee level before coming to the full Council.

The proposed responses to the Grand Jury findings and recommendations are presented below.

FINDINGS

For each finding in the Grand Jury Report, the City Council shall respond by either agreeing or disagreeing wholly or partially with the finding. For each finding to which the response is disagree wholly or partially, the response shall specify the portion of the finding that is disputed and include an explanation of the reasons for the disagreement.

Finding 1: Publicly funded redevelopment activities in the City of San Diego are carried out through an organizational structure marked by confusing lines of operational and financial authority and responsibility.

Proposed Response: **Agree.** However, on September 8, 2009, the City Council approved a set of conceptual changes to the Operating Agreements and the Corporation Bylaws to effectuate greater oversight and accountability of the two non-profit redevelopment corporations, CCDC and SEDC. These changes, which are anticipated to be brought back for final approval in November 2009, will more clearly define operational and financial authority and responsibility within the organizational structure.

Finding 2: The information and tools currently available to the Redevelopment Agency of the City of San Diego, the City Council, and the Mayor to oversee the city's redevelopment activities are inadequate to ensure effective operational and financial accountability.

Proposed Response: **Agree.** However, the conceptual changes to the Operating Agreements and Corporation Bylaws approved by the City Council on September 8 will provide for greater information and tools for the Redevelopment Agency, the City Council and the Mayor to ensure effective operational and financial accountability. These changes are anticipated to be brought back in November 2009 for final approval.

Finding 3: Essential information about the finances and operations of the publicly funded redevelopment activities in the City of San Diego is not made available to the public on a timely basis.

Proposed Response: **Agree.** However, the conceptual changes to the Operating Agreements and Corporation Bylaws approved by the City Council on September 8 will provide for greater information for the public about the finances and operations of the Corporations. These changes are anticipated to be brought back in November 2009 for final approval.

RECOMMENDATIONS

For each recommendation in the Grand Jury Report, the City Council shall respond that the recommendation either has been implemented, has not yet been implemented but will be implemented in the future, requires further analysis, or will not be implemented.

The 2008/2009 San Diego County Grand Jury recommends that the City Council of the City of San Diego:

09-04: In its capacity as the board of the Redevelopment Agency of the City of San Diego, establish clear lines of authority and responsibility for the operational and financial management of the redevelopment activities of the Agency.

Proposed Response: **The recommendation has not been implemented, but will be implemented in the future.** On September 8, 2009, the City Council approved a set of conceptual changes to the Operating Agreements and the Corporation Bylaws to effectuate greater oversight and accountability of the two non-profit redevelopment corporations, CCDC and SEDC. These changes will more clearly define operational and financial authority and responsibility within the organizational structure. Some of the more notable changes include:

- Defining the process for appointing and terminating Corporation Presidents;
- Defining the process for removal of Corporation Board members;
- Clarifying the position and powers of the Corporation Presidents and Corporation Board Chairs;
- Clarifying roles and responsibilities for Corporation President performance review and setting compensation for Corporation President and senior staff;
- Requiring Corporation Board review and approval of all fiscal policies, contracts, monthly financial statements, and budget transfers greater than \$10,000;
- Requiring Corporation Boards, Presidents and CFOs to review and certify audited financial statements;

- Requiring Corporation Boards to establish policies and procedures for matters such as purchasing and contracting, personnel, budget and finance, ethics, gifts, and records retention.

It is anticipated that the conceptual changes to the Operating Agreements and Corporation Bylaws will be brought back in November 2009 for final approval and implementation.

09-05: In its capacity as the board of the Redevelopment Agency of the City of San Diego, appoint an Executive Director for the Agency other than the Mayor of San Diego, in order to avoid possible conflicts of interest.

Proposed Response: The recommendation requires further analysis. Prior to 2006, the Mayor was a voting member of the City Council and the Redevelopment Agency. In January 2006, the City of San Diego changed to a “Strong Mayor” form of government for a five-year trial period. Under this form of government, the Mayor is no longer a member of the Council or the Agency. As noted in the Grand Jury report, in order to establish a role for the Mayor under the new form of government, the Agency amended its bylaws to allow the Mayor to be appointed as the Executive Director of the Redevelopment Agency, and to give the Mayor veto powers over actions approved by the Agency board.

In June 2008 San Diego voters approved Proposition B, requiring that the City Council place a measure on the June 2010 ballot to allow voters to decide whether the Strong Mayor form of government should become permanent effective January 1, 2011. While there has been much discussion regarding the appropriate role for the Mayor in redevelopment affairs, it would be premature to establish a formal, long-term role prior to the June 2010 election. If the Strong Mayor form of government is not made permanent, the City will revert to the Council-Manager form of government and the Mayor would again become a member of the City Council and the Redevelopment Agency. However, should voters elect to make permanent the Strong Mayor form of government, an appropriate and long-term role for the Mayor in redevelopment will be determined at that time.

09-06: In its capacity as the board of the Redevelopment Agency of the City of San Diego, modify the bylaws of the Agency to establish a formal, long-term role of the Mayor of San Diego through which the Mayor can meaningfully influence the Agency’s redevelopment activities in the City.

Proposed Response: This recommendation requires further analysis. Prior to 2006, the Mayor was a voting member of the City Council and the Redevelopment Agency. In January 2006, the City of San Diego changed to a “Strong Mayor” form of government for a five-year trial period. Under this form of government, the Mayor is no longer a

member of the Council or the Agency. As noted in the Grand Jury report, in order to establish a role for the Mayor under the new form of government, the Agency amended its bylaws to allow the Mayor to be appointed as the Executive Director of the Redevelopment Agency, and to give the Mayor veto powers over actions approved by the Agency board.

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09-07: In its capacity as the board of the Redevelopment Agency of the City of San Diego, renegotiate or negotiate new operating agreements for the management of redevelopment areas by other entities (such as CCDC and SEDC) to include terms requiring those entities to submit to the Agency, the Mayor's Office, and the Office of the Independent Budget Analyst, and make readily available to the public: (a) an annual report of the entity's operational and financial activities and conditions; (b) financial statements and a report of an independent financial audit thereon by a certified public accountant, annually; (c) a written, monthly financial report showing actual expenditures to date for each budget line item compared to the approved budget; and (d) a written, monthly report of consultant contracts showing the contractor's name, date contract entered, contract purpose, dollar amount of the contract, and actual expenditures to date per contract.

Proposed Response: The recommendation has not been implemented, but will be partially implemented in the future. The conceptual changes to the Operating Agreements and Corporation Bylaws approved by the City Council on September 8 will:

- Require Corporations to follow City administrative budget policies in any administrative budget submission, including submission to the City CFO prior to the Redevelopment Agency;
- Provide the Agency the right to order a performance audit no more than once per year;

- Require Corporations to develop and submit for Agency approval a five-year strategic plan with performance goals and metrics that reflect the needs of the community;
- Require Corporations to perform annual financial audits and submit them to the City no later than 135 days following the end of the fiscal year;
- Require Corporation Boards, Presidents and CFOs to review and certify Corporation financial statements;
- Require Corporation Boards to review and approve monthly financial statements comparing actual to budget revenues and expenditures;

While the conceptual changes to the Operating Agreements and Corporation Bylaws do not specifically require a written monthly report of consultant contracts, they do require Corporation Boards to adopt purchasing and contracting policies that provide for timely public disclosure of executed contracts. The conceptual changes also establish that the Agency and the City have the right to inspect all documents and records, including but not limited to financial and personnel records.

It is anticipated that the conceptual changes to the Operating Agreements and Corporation Bylaws will be brought back in November 2009 for final approval and implementation.

09-08: In its capacity as the board of the Redevelopment Agency of the City of San Diego, file the Agency's Annual Reports, including the independent financial audit report, with the State Controller's Office within six months of the close of the Agency's fiscal year, as required by California law.

Proposed Response: The recommendation has been implemented. Since 2003, Redevelopment Agency Annual Reports were delayed due to the lack of independent financial audit reports. Other State reporting requirements were met, but the bound compilation of the reports, including the independent financial audit reports, were not possible until the audit reports were completed in 2008 and 2009. The task of completing the backlogged Agency annual reports is complete. City, Agency and Corporation staff will continue to work diligently with outside auditors to expedite the completion of annual financial reports and meet the filing requirements of California Redevelopment Law embodied with the California Health and Safety code.

09-09: In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require that directors be elected by the City Council from nominations submitted by the Mayor and that removal of directors by the city council be by two-thirds vote upon a request by the Mayor.

Proposed Response: The recommendation has not been implemented but will be implemented in the future. Currently, Corporation Board members are appointed by the Mayor and confirmed by the City Council with a majority vote. Under the conceptual changes to the Operating Agreements and Corporation Bylaws approved by the City Council on September 8, the Mayor may suspend and recommend removal of any Board member, which may be approved by the Council with a majority vote. Additionally, the City Council may remove a Board member without a recommendation by the Mayor with a two-thirds majority vote.

It is anticipated that the conceptual changes to the Operating Agreements and Corporation Bylaws will be brought back in November 2009 for final approval and implementation.

09-10: In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require confirmation by the City Council of the selection of a president/chief operating office/chief executive officer by each corporation's board of directors and authorizing removal of such officer by a two-thirds vote of the City Council upon a request by the Mayor.

Proposed Response: The recommendation has not been implemented, but will be partially implemented in the future. Under the conceptual changes to the Operating Agreements and Corporation Bylaws approved by the City Council on September 8, a candidate selection committee comprised of one representative of the Mayor's Office, two representatives from the City Council and two representatives from the Corporate Board will provide no less than three candidates to the Mayor, who will appoint the President subject to Council confirmation by a two-thirds majority.

In addition, the Corporation President may be terminated by the Mayor with or without cause, subject to appeal to the City Council, which may override such termination with a two-thirds majority vote. The City Council may terminate the Corporation President for cause by a two-thirds majority vote in the event the Mayor takes no such action.

It is anticipated that the conceptual changes to the Operating Agreements and Corporation Bylaws will be brought back in November 2009 for final approval and implementation.

09-11: In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require that those entities submit to the City Council, the Mayor's Office, and the Office of the Independent Budget analyst, and make readily available to the public: (a) an annual report of the entity's operational and financial activities and condition; (b) financial

statements and a report of an independent financial audit thereon by a certified public accountant, annually; (c) a written, monthly financial report showing actual expenditures to date for each budget line item compared to the approved budget; and (d) a written, monthly report of consultant contracts showing the contractor's name, date contract entered, contract purpose, dollar amount of the contract, and actual expenditures to date per contract.

Proposed Response: The recommendation has not been implemented, but will be partially implemented in the future. The conceptual changes to the Operating Agreements and Corporation Bylaws approved by the City Council on September 8 will:

- Require Corporations to follow City administrative budget policies in any administrative budget submission, including submission to the City CFO prior to the Redevelopment Agency;
- Provide the Agency the right to order a performance audit no more than once per year;
- Require Corporations to develop and submit for Agency approval a five-year strategic plan with performance goals and metrics that reflect the needs of the community;
- Require Corporations to perform annual financial audits and submit them to the City no later than 135 days following the end of the fiscal year;
- Require Corporation Boards, Presidents and CFOs to review and certify Corporation financial statements;
- Require Corporation Boards to review and approve monthly financial statements comparing actual to budget revenues and expenditures;

While the conceptual changes to the Operating Agreements and Corporation Bylaws do not specifically require a written monthly report of consultant contracts, they do require Corporation Boards to adopt purchasing and contracting policies that provide for timely public disclosure of executed contracts. The conceptual changes also establish that the Agency and the City have the right to inspect all documents and records, including but not limited to financial and personnel records.

It is anticipated that the conceptual changes to the Operating Agreements and Corporation Bylaws will be brought back in November 2009 for final approval and implementation.

09-12: In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require that each entity make readily available to the public and publish on its internet site: (a) its articles of incorporation; (b) its bylaws; (c) its operating agreements with the Redevelopment Agency of the City of San Diego; (d) its annual report; (e) its budget (proposed and approved); (f) its most recent independent audit report; (g)

its most recently filed federal tax return (Form 990); (h) its most current monthly statement of expenditures to date for each budget line item compared to the approved budget; (i) its most current monthly report of consultant contracts showing the contractor's name, date contract entered, contract purpose, dollar amount of the contract, and actual expenditures to date per contract; (j) the statements of financial interests (Form 700) filed by its directors, officers, and employees; and (k) its current conflict of interest policy.

Proposed Response: The recommendation has not been implemented, but will be partially implemented in the future. As part of the conceptual changes to the Operating Agreements and Corporation Bylaws approved by City Council on September 8, the Corporations will be required to provide key documents and information to the public via website, including Board and Board Committee agendas, reports and minutes; current adopted budgets; annual financial reports; Corporation Bylaws; and Corporation policies.

The conceptual changes to the Operating Agreements and Corporation Bylaws did not specifically require federal tax returns, monthly contractors reports or statements of financial interest to be posted on the Corporation websites. These items may be considered when the conceptual changes are brought back for final approval in November 2009.

09-13: In its capacity as the San Diego City Council adopt and amend the bylaws of CCDC and SEDC to require their directors and staff to undergo training on California redevelopment law and on corporate fiduciary duties.

Proposed Response: The recommendation has not been implemented, but will be partially implemented in the future. As part of the conceptual changes to the Operating Agreements and Corporation Bylaws approved by City Council on September 8, Corporation Board Members and executive officers shall receive training in ethics, fiduciary duties and governance every two years, with training certificates to be submitted to the City CFO. It is anticipated that the conceptual changes to the Operating Agreements and Corporation Bylaws will be brought back in November 2009 for final approval and implementation.

09-14: In its capacity as the San Diego City Council require training of city council members and city redevelopment staff on California redevelopment law.

Proposed Response: The recommendation has been partially implemented. Redevelopment Agency and Corporation staff have ongoing training programs including

participation in redevelopment specific classes, seminars, symposiums, distance learning sessions and conferences through the California Redevelopment Association, the multi-day CRA Redevelopment Institute, the National Association of Redevelopment and Housing Officials and Urban Land Institute. In addition, the Redevelopment Division hosts educational meetings for Division and Corporation staff and other as appropriate on specific subjects and processes such as environmental cleanup, affordable housing, legislative matters, urban design, place making, redevelopment law, negotiations and components of development agreements, and reporting requirements.

The City Council does not currently receive formal training on California redevelopment law. However, in December 2006 the City Council implemented a comprehensive financial training program. Under this program, the Council receives specialized financial trainings two times per year, on topics such as securities law and financial disclosure, debt issuance and administration, and multi-year budget planning. Training on California redevelopment law could be considered for incorporation into this training program.

[SIGNED]

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